

Refusing to Hire Applicants With Latex Allergies Amounts to Disability Discrimination, EEOC Says


A health care provider has agreed to pay \$340,000 to settle allegations that it violated the Americans With Disabilities Act when it refused to hire workers with latex allergies.

John Muir Health, which operates hospitals and other medical facilities in California, entered into the settlement with the U.S. Equal Employment Opportunity Commission to resolve the claims. The commission had filed suit on behalf of eight individuals who had job offers withdrawn after testing positive for an allergy to latex.

According to the EEOC, the employer assumed the test results meant that the workers “had life-threatening latex allergies and could not safely work in a hospital setting.” Subsequently, however, some of the workers were independently evaluated by allergists who

concluded that they did not have an allergy that would prevent them from working in a hospital, according to the EEOC. Furthermore, all of the applicants continued to work in the health care industry.

“Excluding candidates from hire based on well-intentioned but unfounded fears for their safety violates federal law,” William R. Tamayo, an EEOC regional attorney, said in a statement.

In addition to the monetary settlement, the employer agreed to revise its policies. “For example, employment candidates determined to have latex sensitivities will be evaluated by an allergist to determine what work restrictions, if any, may be appropriate,” the commission explained. The employer also will provide staff training on accommodating workers with latex allergies. 

Regulations (continued from p. 5)

a covered entity perceived him as substantially limited in the ability to perform a major life activity in order for the individual to establish that he or she is covered under the ‘regarded as’ prong,” the appendix to the regulations explains. Nor is it necessary to demonstrate that the impairment would be substantially limiting for an individual to be regarded as having such an impairment, the EEOC added.

While the final regulations do not include a previously proposed rule prohibiting discrimination based on an individual’s symptoms, Fram said it is still prudent to keep supervisors out of medical discussions. “Let that be an HR function,” he said.

Employers can rest assured that, as in the past, helpful actions will not lead to “regarded as” claims. If an employee requests assistance, an employer has not improperly regarded them as disabled by providing that modification. “Post-Amendments Act, I think your defense is even better here than it was before,” Fram said. However, as always, “nice” actions such as inflated performance reviews or withholding discipline can be evidence of discrimination.

Employers also may wish to exercise caution with individuals who smoke, Fram said. Regarding an individual as having an addiction and carrying out an adverse employment action on that basis could be dangerous. “Stay tuned,” he said, “I think the Amendments Act does give a smoker a ‘regarded as’ claim.”

Transitory and Minor

Individuals cannot qualify for “regarded as” coverage, however, if their impairments are transitory and minor. This exception ensures that individuals cannot succeed on a “regarded as” claim with impairments such as the normal flu.

In using the “transitory and minor” defense, employers will be required to show that the impairment was actually transitory and minor — not that it mistakenly believed it was transitory and minor. “For example, an employer who terminates an employee whom it believes has bipolar disorder cannot take advantage of this exception by asserting that it believed the employee’s impairment was transitory and minor, since bipolar disorder is not objectively transitory and minor,” the EEOC explained in the appendix. “At the same time, an employer that terminated an employee with an objectively ‘transitory and minor’ hand wound, mistakenly believing it to be symptomatic of HIV infection, will nevertheless have ‘regarded’ the employee as an individual with a disability, since the covered entity took a prohibited employment action based on a perceived impairment (HIV infection) that is not ‘transitory and minor.’”

For More Information

The EEOC’s new employment regulations, with changes highlighted, are available in App. III of the *Handbook*. 